



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
MISC CIVIL APPLICATION NO 48 OF 2015

CHARITY NYARUAI NYAMU.....APPLICANT

VERSUS

ABDIRAHIM HAJI AHMEDRESPONDENT

R U L I N G

This application is dated 2nd day of July, 2015. It states that it is predicated upon Order 51 Rule 1 and 3 of the Civil procedure Rules and Section 6, 17 and 18 of the Civil Procedure Act and all the enabling provisions. It seeks order that:-

1. ***This application be certified as urgent.***
2. ***That service of this application be dispensed with in the 1st instance.***
3. ***That this application be heard exparte in the 1st instance.***
4. ***That there be stay of proceedings in Isiolo Senior Principal Magistrate's case No 33 of 2011 pending the hearing and determination of this application.***
5. ***That there be stay of the proceedings in ISIOLO SPMCC NO. 33 of 2011 until the hearing and determination of Meru High Court Constitutional Petition No. 33 of 2011.***
6. ***That in the alternative, Isiolo SPMCC No. 33 of 2011 be transferred to Meru High Court and be consolidated with High Court Constitutional Petition No. 6 of 2011.***
7. ***That cost incidental to this application be provided for by the respondent.***

The application is buttressed by the affidavit of **Charity Nyaruai Nyamu** and has the following grounds:-

- a. ***That the suit property herein is plot No. MB 478 within Mwangaza Area of Isiolo.***
- b. ***That the respondent is alleged to have balloted this plot and he was given by the now defunct County Council of Isiolo.***
- c. ***That the whole process of the alleged balloting is contested by the residents of Mwangaza Area of Isiolo in Constitutional Petition No. 6 of 2011 where the applicant is one of the Petitioners.***
- d. ***That the respondent has sued the applicant in Isiolo SPMCC No 33 of 2011 on the basis of that illegal balloting which residents are challenging as a community in Petition No. 6 of 2011.***
- e. ***That the applicant will be greatly prejudiced if there is contradictory decision in Isiolo SPMCC No. 33 of 2011 and in Petition No. 6 of 2011 at Meru High Court.***

This matter came up for directions to confirm filing and exchange of Submissions on 9/11/2015. The applicant has filed Submissions but the Respondent has not done so. I do confirm that the respondent's Advocate had been properly served and therefore aware of this date. As he has not filed his Submissions, I am unable to fix a date for the Ruling.

Mr. Ondieki has asked the Court to allow this application as the respondent is merely delaying the matter. I find Mr. Ondieki's oral application meritorious. In the Circumstances, **the application is allowed in terms of prayer 5 only. Costs shall be in the cause.**

Delivered in Open Court at Meru this 9th day of November, 2015 in the presence of:-

CC: Lilian /Daniel

Ondieki for the Applicant.

P. M. NJOROGE

JUDGE